

**§ 466.96 Review period and reopening of initial denial determinations and changes as a result of DRG validations.**

(a) *General timeframe.* A PRO or its subcontractor—

(1) Within one year of the date of the claim containing the service in question, may review and deny payment; and

(2) Within one year of the date of its decision, may reopen an initial denial determination or a change as a result of a DRG validation.

(b) *Extended timeframes.* (1) An initial denial determination or change as a result of a DRG validation may be made after one year but within four years of the date of the claim containing the service in question, if HCFA approves.

(2) A reopening of an initial denial determination or change as a result of a DRG validation may be made after one year but within four years of the date of the PRO's decision if—

(i) Additional information is received on the patient's condition;

(ii) Reviewer error occurred in interpretation or application of Medicare coverage policy or review criteria;

(iii) There is an error apparent on the face of the evidence upon which the initial denial or DRG validation was based; or

(iv) There is a clerical error in the statement of the initial denial determination or change as a result of a DRG validation.

(c) *Fraud and abuse.* (1) A PRO or its subcontractor may review and deny payment anytime there is a finding that the claim for service involves fraud or a similar abusive practice that does not support a finding of fraud.

(2) An initial denial determination or change as a result of a DRG validation may be reopened and revised anytime there is a finding that it was obtained through fraud or a similar abusive practice that does not support a finding of fraud.

**§ 466.98 Reviewer qualifications and participation.**

(a) *Peer review by physician.* (1) Except as provided in paragraph (a)(2) of this section, each person who makes an initial denial determination about services furnished or proposed to be fur-

nished by a licensed doctor of medicine or osteopathy or by a doctor of dentistry must be respectively another licensed doctor of medicine or osteopathy or of dentistry with active staff privileges in one or more hospitals in the PRO area.

(2) If a PRO determines that peers are not available to make initial denial determinations, a doctor of medicine or osteopathy may make denial determinations for services ordered or performed by a doctor in any of the three specialties.

(3) For purposes of paragraph (a)(1) of this section, individuals authorized to practice medicine in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands as "medical officers" may make determinations on care ordered or furnished by their peers but not on care ordered or furnished by licensed doctors of medicine or osteopathy.

(b) *Peer review by health care practitioners other than physicians.* Health care practitioners other than physicians may review services furnished by other practitioners in the same professional field.

(c) *DRG validation review.* Decisions about procedural and diagnostic information must be made by physicians. Technical coding issues must be reviewed by individuals with training and experience in ICD-9-CM coding.

(d) *Persons excluded from review.* (1) A person may not review health care services or make initial denial determinations or changes as a result of DRG validations if he or she, or a member of his or her family—

(i) Participated in developing or executing the beneficiary's treatment plan;

(ii) Is a member of the beneficiary's family; or

(iii) Is a governing body member, officer, partner, 5 percent or more owner, or managing employee in the health care facility where the services were or are to be furnished.

(2) A member of a reviewer's family is a spouse (other than a spouse who is legally separated under a decree of divorce or separate maintenance), child (including a legally adopted child), grandchild, parent, or grandparent.